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UNITED SDTASTES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: January 19, 2011
10:00 A.M.

In re

NEW YORK CITY OFF-TRACK
BETTING CORPORATION.

Debtor.

Chapter 9

Case No. 09-17121 (MG)

**OPPOSITION OF 801-815 LANDLORD ASSOCIATES, INC.
TO DEBTOR'S SECOND OMNIBUS MOTION FOR AN
ORDER AUTHORIZING THE REJECTION OF
LANDLORD'S COMMERCIAL LEASE**

**TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:**

801-815 LANDLORD ASSOCIATES, INC. (the "801-815 Landlord"), as and for its opposition to the second omnibus motion by New York City Off-Track Betting Corporation (the "NYC OTB") for an order authorizing the rejection of certain commercial leases (the "Rejection Motion"), respectfully represents and shows this Court as follows:

1. As part of its omnibus filing regarding disposition of leases in furtherance of a possible dismissal of the within bankruptcy, NYC OTB seeks to reject a written lease dated March 1, 2000 (the "801-815 Lease") by and between 801-815 LANDLORD ASSOCIATES, INC. (801-815 Landlord"), and NYC OTB as Tenant for premises known as and located at 801-815 East 241st Street, Bronx, NY (the "801-815 Premises"). The 801-815 Lease was amended as of May

2010. For reasons herein set forth, NYC OTB should not be permitted to reject the 801-815 Lease as it would be a fraud on the 801-815 Landlord as a creditor and because it constitutes a post-petition agreement.

2. On December 3, 2009 (the "Petition Date"), NYC OTB filed a voluntary petition for relief under chapter 9 of Title 11 of the United States Code (the "Bankruptcy Code"). On March 22, 2010, this Court entered an order for relief (the Order for Relief") in this case.

3. As of the Petition Date, one of the unexpired leases of non-residential real property held by the NYC OTB pertained to the 885 Premises.

4. As noted, NYC OTB leased the 801-815 Premises from the 801-815 Landlord pursuant to a written lease agreement dated March 1, 2000. The 801-815 Lease amendment was made in May 2010 after the Petition Date. As such, Section 365(a), the basis for the Rejection Motion, is not applicable as it is a contract or lease entered into after the commencement of the case (i.e., the Petition Date).

5. As shown in the opposition by 991 Second Avenue, L.L.C. to the within Rejection Motion, other courts have held that post-petition contracts and leases should not be subject to rejection under section 365 which applies to a "debtor" and not a "debtor-in-possession." *In re Merry-Go-Round Enterprises, Inc.*, 180 F.3d 149, 159 (4^{th} Cir. 1999).

6. Heretofore on December 15, 2010, NYC OTB filed a motion pursuant to section 930 of the Bankruptcy Code to dismiss this chapter 9 case (the "Dismissal Motion"). Later, on December 28, 2010, NYC OTB filed the within Rejection Motion pursuant to Section 365(a) of the Bankruptcy Code, applicable in chapter 9 cases.

7. It is the timing of the Dismissal Motion and the Rejection Motion which demonstrates that NYC OTB seeks to both get out of the Bankruptcy Court but still seek its protection prior to

the dismissal. While the Court has the prerogative to sign decisions on the pending Dismissal Motion and Rejection Motion in any order it deems advisable, it is clear that the intent of NYC OTB at the time of making the Rejection Motion was to deprive the 801-815 Landlord -- and all other similarly situate landlords – of any and all rights they may have as creditors under State law. This obscene result is clearly a fraud on the 801-815 Landlord and the other landlords and, by virtue of the order of the motions and obvious intent of the movant, it may be a fraud on the Court.

8. The Court has before it both the first-filed Dismissal Motion and the later-filed Rejection Motion. In the event that the Dismissal Motion is granted, it is requested that the Rejection Motion be denied so that the 801-815 Landlord may pursue its remedies in the State courts.

9. Counsel Norman A. Kaplan apologizes to the Court and counsel for the late filing of the within opposition. I have been in Florida on business since January 5 and am returning home to New York on January 20. During this period, I had limited access to my office facilities and the two recent snow storms added to the difficulties in my office. Therefore, I respectfully request and move for leave to file this Opposition late. There is no prejudice to any party.

WHEREFORE, 801-815 LANDLORD ASSOCIATES, INC. requests that this Court enter an order denying the Rejection Motion, permit the late filing of this Opposition and grant such other relief as the Court deems just and proper.

Dated: Great Neck, New York
January 17, 2011

/s/ Norman A. Kaplan
NORMAN A. KAPLAN, ESQ.
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In re Chapter 9

NEW YORK CITY OFF-TRACK Case No. 09-17121 (MG)
BETTING CORPORATION.

Debtor.

I, Norman A. Kaplan, hereby certify that on January 17, 2011, I caused a true and correct copy of the Opposition Of 801-815 Landlord Associates, Inc. To Debtor's Second Omnibus Motion For An Order Authorizing The Rejection Of Landlord's Commercial Lease on behalf of 801-815 LANDLORD ASSOCIATES, INC. to be filed electronically with the Court and served upon the parties in this proceeding who receive electronic mail service through CM/ECF.

January 17, 2011

Norman A. Kaplan

Norman A. Kaplan

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case Number: Case No. 09-17121 (MG)

In re

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OPPOSITION OF 801-815 LANDLORD ASSOCIATES, INC.
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LANDLORD'S COMMERCIAL LEASE

NORMAN A. KAPLAN
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Great Neck, New York 11021
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To:

Service of a copy of the within
is hereby admitted.

Dated:

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a (~~certified~~) true copy of an duly entered in the office of the clerk of the within named Court on ______________ ___, 2011.

☐ NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at
on 2011, at .M.

Dated: January 17, 2011

Yours, etc.

NORMAN A. KAPLAN